

REMARKS

The applicant has amended the abstract and claims as set out above in the amendment sections and provides remarks set out below to address each concern raised by the office in the official communication mailed May 7, 2003. Amendments to the abstract and claims have been made to comply with the examiner's concerns, correct typographical errors and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments have also been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively effecting the scope of protection provided by the disclosure and claims of the present application, and particularly to avoid prosecution history estoppel, limitation of the scope of equivalences, or the like.

Cancellation of Claims

The applicant cancels claims 64, 101 and 107-109 without prejudice. The applicant does not waive any right to have these claims examined without any restriction in breadth in a subsequent continuing application, if desired.

Abstract

The applicant has included an abstract to be added to the specification on a separate sheet. By complying with the office's request with regards to the abstract, the issue is believed fully resolved.

35 U.S.C. § 112 Concerns

The office raised concerns under 35 U.S.C. § 112 with respect to certain claims. The applicant has amended claims to correct antecedent basis, to amend the preambles of certain claims, to amend claim dependencies, and to address clarity concerns raised by the office.

With respect to claim 6, the applicant has amended the claim for clarity to include, *inter alia*, "a cup surface of said portable member." This makes clear how the cup surface relates to the portable oscillating device.

With respect to claim 12, the applicant has amended the claim for the purpose of clarity to include, *inter alia*, "joining element removably joins said portable member and said energy converter." This makes clear how the joining element relates to the portable oscillating device.

With respect to claim 54, the applicant has amended the claim to clarify that the fluidic oscillation coupling element fluidically couples the mechanical oscillations to the flow cytometer nozzle exterior surface.

In claim 88, applicant amends the claim to recite, *inter alia*, "a portable member configured so as to mechanically couple said mechanical oscillations to said flow cytometry apparatus."

In claim 89, applicant has deleted the step of "creating oscillations in the vicinity of said flow cytometry apparatus" to clarify the claim language. The mechanical oscillations are *fluidically coupled* to an exterior surface of the flow cytometry apparatus.

Accordingly, as the claims are currently stated, applicant believes that the amendments and these remarks address the 35 U.S.C. § 112 concerns raised by the office.

35 U.S.C. § 102 and 103 Concerns

The office raised concerns under 35 U.S.C. §§ 102 and 103 with respect to claims 63 and 107-109. Claims 63 and 107-109 have been canceled, therefore these concerns are no longer applicable.

It is noted that the office has given certain reasons for allowance of the application. It is noted, however, that it is the claims as a whole and not just the summary provided by the examiner, which makes the claims allowable.

Because the additional prior art cited by the examiner has been included merely to show the state of the prior art and has not been utilized to reject the claims, no further comments concerning these documents are considered necessary at this time.

CONCLUSION

This amendment and request for consideration has submitted amendments to add an abstract, to amend claims 6-12, 14-34, 37-40, 45-49, 52, 54-57, 62-63, 65-67, 70-72, 77-79, 88-98, 100 and 102, and to cancel claims 64, 101, 107-109. The amendments in no way are intended to restrict the claims from any equivalent structures that may exist now or in the future. Furthermore, the amendments should not be interpreted in any manner that establishes prosecution history estoppel. In view of the above, the applicant believes the above amendment places claims 1-63, 65-100 and 102-106 in condition for allowance and respectfully requests allowance of the claims at the examiner's earliest convenience.

Dated this 6th day of November, 2003.

Respectfully Submitted,
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